



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/158402

PRELIMINARY RECITALS

Pursuant to a petition filed June 16, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on July 24, 2014, at Kenosha, Wisconsin.

The issue for determination is whether the Kenosha County Human Service Department (the agency) correctly determined that the Petitioner was overpaid child care benefits between April 2013 and March 2014.

NOTE: The record was held open to give the parties an opportunity to supplement the record. The Petitioner submitted a letter from [REDACTED] dated July 28, 2014 with a list of his medications. [REDACTED] letter and the medication list have been marked collectively as Exhibit 10 and entered into the record.

The agency submitted case comments dates May 15, 2014 to June 27, 2014; a Medical Capacity for Providing Child Care form dated May 21, 2014 and a letter from [REDACTED] dated May 16, 2014. The case comments have been marked as Exhibit 11, the Medical Capacity for Providing Child Care form has been marked as Exhibit 12 and the May 16, 2014 letter from [REDACTED] has been marked as Exhibit 13. All three Exhibits have been entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Karen Mayer, Fair Hearing Representative
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. In 2012 and prior, the Petitioner provided verification that her husband, [REDACTED], was unable to care for their children due to a medical condition. (Exhibit 2; Exhibit 3 and Exhibit 8)
3. In 2013, the agency failed to request verification of [REDACTED]'s medical condition and continued to exempt [REDACTED] from the requirement that he engage in an approved activity, so that the Petitioner could continue receiving childcare benefits. (Exhibit 2)
4. In April 2014, the agency discovered the error. (Exhibit 2 and 11)
5. On May 21, 2014, the agency sent the Petitioner a Child Care Overpayment Notice, claim number [REDACTED] indicating that she was overpaid childcare benefits for the period of April 1, 2013 and April 20, 2014, in the amount of \$424.08. (Exhibit 5)
6. The notice incorrectly indicated that the overpayment was due to client error. Any error was on the part of the agency. (Exhibit 5; Testimony of Ms. Mayer)
7. On May 21, 2014, the agency sent the Petitioner a second Child Care Overpayment Notice, claim number [REDACTED], indicating that she had been overpaid childcare benefits in the amount of \$4,915.92 for the period of April 14, 2013 to March 31, 2014. (Exhibit 5)
8. That notice also incorrectly indicated that the overpayment was due to client error. Any error was on the part of the agency (Exhibit 5; Testimony of Ms. Mayer)
9. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 16, 2014. (Exhibit 1)
10. [REDACTED] was unable to care for the children due to his use of narcotic pain medication between April 2013 and March 2014. (Testimony of [REDACTED] and Exhibit 10)

DISCUSSION

The county agency is legally required to seek recovery of all overpayments of child care benefits. Wis. Stat. § 49.195(3) An overpayment occurs when an individual receives more childcare benefits that he or she was entitled to received. Wis. Admin. Code §DCF 201.04(5)(a) The county agency / Department of Children and Families must determine whether an overpayment has occurred; it must notify the recipient, and it must give the recipient an opportunity for a review and hearing. Wis. Stat. § 49.195(3), *Wisconsin Shares Child Care Manual (CCM)*, §§2.1.5.2 and 2.1.5.3 See also, Wis Stats. Sec. § 49.152(2), & § 227.42, *et. seq.*

The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *CCM* §2.1.5.2. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the Petitioner. This provision may be viewed online by the Petitioner at <http://dcf.wisconsin.gov/childcare/wishares/pdf>.

In the case at hand, the agency asserts that the Petitioner received more child care benefits than she was entitled to, because her husband was able to care for the children, but did not do so.

In order to be eligible for childcare benefits, both parents in a two parent family must be working / engaged in an approved activity. *Wisconsin Shares Child Care Manual (CCM) §1.4.8.2*. An exception will be made when one parent is unable to participate in an approved activity because of a health condition and is unable to care for the children. *Id.*

The agency does not dispute the fact that [REDACTED] was unable to participate in an approved activity and received Social Security Disability Income (SSDI) during the time in question. (See Exhibit 8) It is undisputed that [REDACTED] was unable to care for the children prior to April 2013, the beginning of the overpayment period. It is undisputed that [REDACTED] has been unable to care for the children since May 2014, the end of the overpayment period. However, the agency has presented no evidence to prove that [REDACTED] suddenly got better during the overpayment period, such that he was able to care for his children.

[REDACTED] testified credibly that he has been receiving SSDI since 1985 due to mental health issues, i.e. post-traumatic stress disorder, and physical issues. [REDACTED] testified credibly that his condition has not changed. Petitioner has provided documentation from [REDACTED]'s doctor showing that from at least November 1, 2013 through April 26, 2014, [REDACTED] was unable to care for the children due to the side effects of his medications.

Based upon the foregoing, it is found that the Petitioner was unable care for the children between April 2013 and March 2014 and that no overpayment of child care benefits occurred.

CONCLUSIONS OF LAW

The agency incorrectly determined that the Petitioner was overpaid childcare benefits between April 2013 and March 2014.

THEREFORE, it is

ORDERED

That the agency rescind claim numbers [REDACTED] and [REDACTED]; and that it cease all collection efforts. The agency shall take all administrative steps necessary to complete these tasks within ten days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

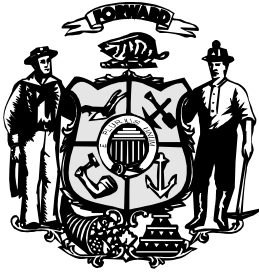
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of September, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 22, 2014.

Kenosha County Human Service Department
Public Assistance Collection Unit
Child Care Fraud